IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.421 of 2006

Kothari Auto Parts Manufacturers
Pvt.Ltd. Petitioner
Vs.
Kothari Kamgar Committee Respondent

Mr.J.P.Cama, Sr.Counsel with Mr.A.K. Jalisatgi for petitioner.
Mr.Jayendra Khairnar for resp.

CORAM: B.H.MARLAPALLE,J.

August 16, 2006.

P.C.

. Heard Mr.Cama, the learned Senior Counsel with Mr.Jalisatgi for the petitioner-company. It appears that the petitioner had moved an application at Exhibit 16 in Referent (IT) No.1 of 2004 and the same has been rejected by the impugned order dated 19/9/2005 passed by the learned Member of the Industrial Tribunal at Thane.

. Mr.Cama has referred to the proviso added to Section 36 of the Industrial Disputes Act, 1947 by the amendment incorporated by the State of Maharashtra and submitted that when Maharashtra Shramik Sena is the recognised union for the concerned establishment, no other union could be a party to the reference pending before the Tribunal.

A perusal of the application at Exhibit 16 shows that no such specific plea was taken and even the name of the recognised union was not set out by the petitioner-company and, therefore, the learned Member could not refer to the scheme of Section 36 of the Industrial Disputes Act, 1947 as amended by the State of Maharashtra.

. This petition is, therefore, disposed off by granting liberty to the petitioner to file a fresh application raising the plea of maintainability of the reference on the basis of Section 36 of the Industrial Disputes Act, 1947 and if such an application is filed within a period of four weeks from today, the said issue will be framed as a preliminary issue and to be decided along with all other issues after the parties adduce evidence and it is made clear that the impugned order will in no way affect the decision of the Tribunal on the preliminary issue.

(B.H.MARLAPALLE,J.)